

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**B.P.J., by her next friend and mother,
HEATHER JACKSON,
Plaintiff,**

v.

**Civil Action No. 2:21-cv-00316
Honorable Joseph R. Goodwin, Judge**

**WEST VIRGINIA STATE BOARD OF EDUCATION,
HARRISON COUNTY BOARD OF EDUCATION,
WEST VIRGINIA SECONDARY SCHOOL
ACTIVITIES COMMISSION, W. CLAYTON BURCH
in his official capacity as State Superintendent, and
DORA STUTLER in her official capacity as
Harrison County Superintendent,
Defendants.**

**WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION'S
MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Now comes West Virginia Secondary School Activities Commission (WVSSAC), by counsel, Roberta F. Green, Anthony E. Nortz, Kimberly M. Bandy and Shuman McCuskey Slicer PLLC, and, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, hereby moves this Court to dismiss all claims asserted against it with prejudice as a matter of law because Plaintiff's Complaint fails to state a claim against WVSSAC upon which relief can be granted.¹ In this matter, Plaintiff has alleged that enactment of H.B. 3293 has resulted in violation of Title IX and the Equal Protection Clause of the 14th Amendment when a principal within the Harrison County Board of Education system indicated Plaintiff could not run on the girls' track team. Plaintiff is seeking a ruling that she is entitled to participate on the sports team of the gender with which she identifies.

¹ See, e.g., *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009); *Twombly v. Bell Atl. Corp.*, 550 U.S. 554, 570 (2007).

Here, there is no allegation that WVSSAC has taken any action to enforce H.B. 3293 nor is WVSSAC called upon to take any action at this time. As such, Plaintiff's claims against WVSSAC should be dismissed because there is no potential remedy as against WVSSAC that would result in the relief Plaintiff seeks. In support of this Motion, WVSSAC contemporaneously submits its Memorandum of Law.

Accordingly, WVSSAC respectfully requests that its Motion to Dismiss be granted.

**WEST VIRGINIA SECONDARY SCHOOL
ACTIVITIES COMMISSION,
By Counsel.**

/S/ Roberta F. Green

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CERTIFICATE OF SERVICE

I hereby certify that I, Roberta F. Green, have this day, the 2nd day of July, 2021, served a true and exact copy of “*West Virginia Secondary School Activities Commission’s Motion to Dismiss Plaintiff’s Complaint*” with the Clerk of Court using the CM/ECF System, which will send notification of such filing to the following counsel of record:

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